

UNAPPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	May 4, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez (arrived 6:30 p.m.), Livengood (arrived 6:30 p.m.), and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss three of the five items listed on the agenda; items 3 and 4 would not be discussed.

1. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Stansell v. City of Milpitas (WCAB No. WCK 0054841 and 0054842)

2. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiator: Eddie Kreisberg and Cherie Rosenquist

Employee Organization: LIUNA

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #022-08-042

Negotiating Parties: City of Milpitas and County of Santa Clara

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Disposition or Lease

4. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

5. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 130-150 Winsor Street and 116-130 N. Main Street

Negotiating Parties: Milpitas Redevelopment Agency and Bruce Pallak, dba Garbe's Towing

Agency Negotiators: Thomas J. Wilson and Steven Mattas

Under Negotiation: Terms and conditions for acquisition of property interest

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

City Attorney Mattas announced that items 3 and 4 were removed from the Closed Session Agenda; for items 1 and 2, direction was provided to staff; and for item 5, the

Council voted 3 to 0 (Mayor Esteves, Vice Mayor Dixon, and Councilmember Polanski, with Councilmembers Gomez and Livengood absent) to approve a relocation agreement with Garbe's Towing.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of April 20, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

SCHEDULE

MOTION to approve the Schedule of Meetings for May 2004 as submitted.

M/S: Livengood, Polanski.

Ayes: 5

PRESENTATIONS

Mayor Esteves presented a Certificate of Reappointment to Diane McDonough who was recently reappointed to the Economic Development Commission.

Mayor Esteves read a Proclamation declaring the week of May 16-22, 2004, as "Public Works Week" and presented it to Glenn Campi of the Public Works Department. Mr. Campi said it was a great honor to receive the proclamation and commented that Public Works services are often taken for granted, as well it should be.

Mayor Esteves read a Proclamation declaring the month of May 2004 as "Older Americans Month" and presented it to Barbara and Art Ebright. Mr. Ebright said they were honored to accept the proclamation on behalf of all Milpitas seniors and the Senior Center; they appreciated the City providing the seniors with the current facility and the new modular addition; the facilities had become a focal point for numerous activities; and thanked the staff for their tireless efforts.

Mayor Esteves read a Proclamation declaring the month of May 2004 as "Water Awareness Month" and presented to Glenn Campi, Water Systems Operator. Mr. Campi said it was great that the City was making aware how precious water is.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Trisha Lee, Adviser for the Leadership Program at Thomas Russell Middle School, along with Jay, a student who will be participating in the Leadership Program next year, asked the Council for a contribution to the Leadership Program to assist 21 students attending a camp this summer at Stanford run by the California Association of Student Leaders; the students need to raise \$8,000 by June 1. Mayor Esteves asked that the request be placed on the next Council agenda.

Craig Ranker, a CAC Commissioner and member of the Ethics Steering Committee, invited everyone to attend the last of the four workshops working to write an ethics code for the City; the remaining workshop will be held Wednesday, May 5, 7:00-9:00 p.m. at City Hall.

Rob Means, Milpitas, suggested since Solectron won't allow the bicycle/pedestrian bridge (over the railroad tracks connecting Yosemite Drive with Curtis near the Great Mall) to be built on its property using standard steel and concrete technology, why not propose using PRT technology to Solectron as an alternative. Mr. Means said a PRT could be built for about half the cost of standard steel and concrete technology and urged the Council to become curious about the possibility of utilizing Personal Rapid Transit.

Ye Zhang, Milpitas, said the Union Pacific trains are running at 1:00 a.m. and asked if there was anyway to reschedule them so they don't operate after midnight. Mr. Zhang also asked if there was any plan to relocate the BFI garbage dump at the end of Dixon to somewhere else. Mayor Esteves asked staff to get back to Mr. Zhang.

ANNOUNCEMENTS

Vice Mayor Dixon, referring to the recent State of the City Address, thanked the Mayor and everyone who participated in making it one of the nicest events the City had had in a long time; acknowledged the students that participated – the two Co-MCs, Kevin Lai and Courtney Turner, Calvin Rodil Tsai who gave the invocation, Daniel Dangca, the vocalist, Hemal Patel who gave the benediction, and Cmdr. Jeff Queenan and the NJROTC. Vice Mayor Dixon reported on April 22, 2004, the Citizens Emergency Preparedness Advisory Commission, under the leadership of its Vice Chair Annell Spencer, and volunteers from the RACES group and the Strategic Actions for Emergencies, completed the 9th Annual MUSD Safety Drill, Evacuation, and Mass Feeding held at Rose Elementary School this year. Vice Mayor Dixon stated she chaired the Joint Powers Authority Board meeting for the Santa Clara County Library System; public input was received on the budget for the County Library System; and it did not look good as the Library District, as a "Special District", was facing the potential loss of \$98 million to \$250 million to the State. Vice Mayor Dixon reported that on Friday, April 23, 2004, the VTA Board held its monthly workshop; following the workshop she and staff met with the representatives of Morgan Hill and Gilroy to talk about priorities and common ground, and would be meeting on a monthly basis; the previous week, the VTA Policy Advisory Board for the Silicon Valley Rapid Transit Corridor met and received the status report on the Draft Environmental Documents.

Councilmember Polanski, referring to the recent State of the City Address, congratulated the Mayor and thanked the Chamber of Commerce for all its support of the event. Councilmember Polanski also announced that the Global Village was held the previous Saturday at the Sports Center with over 13 countries represented, approximately 2,000 attended the wonderful event, and congratulated the service groups and restaurants that participated.

Mayor Esteves said he attended the Sunnyhills Community breakfast where the topic was Literacy and encouraged everyone to volunteer to advocate and support literacy. Mayor Esteves announced that a new business was opening in Milpitas known as the Way Center, Inc., founded and owned by young Milpitas entrepreneurs. Mayor Esteves commented on a recycling review from BFI that congratulated Milpitas businesses for being the cleanest recycling in Santa Clara County and shared an editorial from the *San Jose Mercury News* with the headline "Milpitas Sets an Example for San Jose." The Mayor congratulated the public for getting involved in this worthwhile project and thanked the Community Advisory Commission and staff for supporting this project. Mayor Esteves also read an article from the *San Jose Mercury* about children deserving access to crucial learning in preschool and said Milpitas was ahead of this as last year Milpitas had an Early Childhood Reading Program in partnership with the Milpitas Unified School District and thanked the District and the Council for supporting the program.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted in accordance with the staff recommendations.

M/S: Livengood, Polanski.

Ayes: 5

***5.**

Authorized the Mayor to sign a letter of support for AB 3011 (Laird).

**AB 3011
Motor Vehicle License Fee**

- *6.
Revised Transportation**
- Approved the following proposed revisions to the Transportation Position Statements.
- Added a statement to consider alternative transportation technologies when appropriate;
 - Updated the Cross Connector project to include the preparation of a transit area plan around the Montague transit stations;
 - Deleted discussions of the now completed Countywide Expressway Study and Best Practices Manual;
 - Updated the I-680 High Occupancy Vehicle Lane project to reflect efforts to acquire funding for a soundwall in Sunnyhills and coordination of soundwall construction;
 - Confirmed the City's commitment to provide 20% matching funds for the bike/pedestrian overcrossing at the Union Pacific railroad tracks; and,
 - Added the City's approved priorities for the Valley Transportation Plan 2030 process.
- *7.
S.A.F.E. Neighborhood Preparedness Program**
- Authorized Fire Department acceptance of Crowne Plaza employee's "S.A.F.E." Neighborhood Preparedness Program donation, in the amount of \$260 be utilized for Public Fire and Disaster Preparedness Education instructional materials.
- *8.
Fire Department Recruitments**
- Authorized the City Manager to execute an agreement with Hargis & Associates to assist City staff in developing job analysis, examinations and assessment centers for two upcoming recruitments (Fire Captain and Fire Engineer) in an amount not to exceed \$25,600, subject to approval as to form by the City Attorney.
- *9.
Parallel Force Main (Project No. 6078)**
- Authorized the City Engineer to execute a contract change order with Ranger Pipelines in the amount not to exceed \$17,795, for installation of additional air relief valves and modifications to the access hatch at the treatment plant (Project No. 6078), subject to approval as to form by the City Attorney.
- *10.
Hall Park Walkway (Project No. 5058)**
1. Appropriated \$235,000 from Park Fund.
 2. Awarded the construction contract to JW Riley & Son, Inc. in the amount not to exceed \$288,170.00, for Hall Park Walkway (Project No. 5058), subject to approval as to form by the City Attorney.
- *11.
Singley Drive Neighborhood, Improvements (Project Nos. 4200, 4222, and 8149)**
- Award the contract, including the add alternate to Fanfa, Inc., in the amount not to exceed \$1,085,379.75, for the following Singley Drive neighborhood Improvements, subject to approval as to form by the City Attorney.
- Singley Area Street Rehabilitation, Phase III (Project No. 4200)
 - Marylinn Drive Sidewalk (Project No. 4222)
 - Sports Center Master plan Improvement, Phase I (Project No. 8149)
- *12.
Engineering Plotter**
- Awarded the bid for the plotter/printer used to print large engineering drawings from CAD systems to California Survey & Drafting Supply as the lowest bidder in the amount of \$10,054.19 and authorize the purchase.
- *13.
Network Fusion Link**
- Authorized the installation of a Network Fusion Link between Fire Station One and City Hall (the final step in the communications redundancy process to establish a network fusion link), by Professional Convergence Solutions, in an amount not to exceed \$8,364.75 from funding that is available in CIP 8093 Telecommunications Infrastructure.
- *14.
Miscellaneous Vendors**
- Approved purchase request in the amount of \$5,815.60 to Absolute Energy Solution, Inc. to purchase a 15KW standby generator to replace the existing standby generator on Monument Peak. The generator will serve as back up power supply for radio communications equipment for the Police Department. Absolute Energy Solution submitted the lowest bid. (Funds have been allocated and are available from State Asset Seizure Funds for this purchase.)

PUBLIC HEARINGS

1. BART Extension Comment Letter

Principal Transportation Planner Joe Oliva informed the audience that there was a comment card available for those who would like to make comments on the BART Environmental Document; the VTA was not responsible for responding to public comments; however, staff had provided cards for residents wishing to make comments to the VTA and every comment would be responded to in writing by the VTA as part of this environmental document process. Mr. Oliva explained that this was the BART extension to Milpitas San Jose, and Santa Clara and the Draft Environmental Impact Statement/Draft Environmental Impact Report; the Environmental Document examined three alternatives: 1) No Action; 2) New Starts Baseline; and 3) the BART extension (also referred to as the locally preferred alternative); the corridor would be a 16.3 mile BART extension from Fremont through Milpitas/San Jose and terminating in Santa Clara where there would be a proposed people mover connection to the San Jose International Airport. Mr. Oliva used slides to show the alignment through Milpitas reporting that it would follow the Union Pacific Railroad tracks and would consist of seven stations (including the future South Calaveras Station, which was not part of the package funding at this time); there would be a maintenance facility at the Santa Clara/San Jose boundary; 6 minute headways were proposed with approximately 83,600 riders expected by 2025 and revenue service (under best case scenario) starting by year 2014.

Mr. Oliva, reviewed the five major issues identified by staff in the Comment Letter that included Land Use/Montague Station Design, Dixon Landing Road Options, Railroad Issues, Minimum Operating Segment, and Visual Quality and Aesthetics.

Councilmember Livengood inquired what was going to be done with the system at Dixon Landing; if it was moved to the north, was it planned that all that segment of BART would be aerial from the Warm Springs station all the way to Milpitas. Mr. Oliva responded it would be at-grade entering into Milpitas and would be on an elevated structure just across Dixon Landing Road. Councilmember Livengood commented that the issue would be how to get over Dixon Landing Road without creating a further conflict between rail traffic and automobile traffic and inquired if the aerial option was being pushed because it was the least expensive of the options. Mr. Oliva confirmed that was correct.

Councilmember Livengood inquired of the other two options, which one was the most expensive, and how much more expensive were they than the aerial. City Engineer Mike McNeely stated the at-grade option was \$11 million more expensive and the retained cut was \$8 million more expensive.

Councilmember Livengood inquired if there had been instances where communities had been granted the opportunity for at-grade cuts to avoid the aerial presentation because an aerial structure was much more than just the visual (soundwall costs already incurred would be considered a waste of money). Mr. McNeely said for the money that will have been spent, we will have lost an opportunity to grade separate Dixon Landing from the railroad, eliminate the horns and rail noise, etc., and it was a close call between the at-grade and the retained cut but he thought the investment of a little money up front would improve the situation for the residents.

Councilmember Livengood inquired if the retained cut offered some relief from the vibration issue. Mr. McNeely called upon one of the consultants in the audience.

Dave Wheeler said he had not been able to study it as much as he'd like; the report was very vague as to what the different alternatives entailed and what kind of mitigation they would offer. Councilmember Livengood inquired if Mr. Wheeler meant the difference between the three options as it related to vibration and asked about noise. Mr. Wheeler said any time the train could be put in a retained cut, it would reduce vibration/noise because it had been lowered; when it was elevated, it made it that much more difficult to reduce noise. Councilmember Livengood said he was trying to get a feel for exactly what impact it had and was curious as to what the decibel change/the vibration change might be with all three options.

Mr. Wheeler said that obviously putting the rail into the cut would be the most dramatic improvement for both noise and vibration.

Councilmember Livengood inquired how far to the north would you have to go to begin the actual cut to get to the point it was accomplished at Dixon Landing Road. Mr. Oliva responded 1,000 feet. Councilmember Livengood inquired how long it would be in the cut mode. Mr. Oliva said it would be an equal amount to come back up the grade, he did not have the numbers but could get the exact information at a later time.

Mayor Esteves opened the public hearing and invited comments.

A man who didn't give his name said with respect to the alignment option, the retained cut was the most favorable option for the Dixon Landing area neighborhood as it was least noisy and creates the least vibration, and it only costs \$3 million more than the at-grade option; he did not feel the EIR Document was clear in telling all the differences; commented on the noise level of passing trains and with the BART trains going at the maximum of up to 69 mph; felt that Milpitas should demand the BART trains to run at lower than 35 mph because of the vibration level; there was a ballast mat or underlay that would reduce the vibration levels, and felt the City should demand that BART take proper mitigation action that best suits the residents.

City Manager Wilson reminded everyone that it was very important to write their comments and direct them to the VTA; oral comments were very valuable, however, they do not have to be responded to; sending comments to the VTA will make them part of the record.

Ryan Lederman, attorney representing the Great Mall of Milpitas, thanked staff for their report and said they agreed with a lot but did have a number of concerns about the DEIR and they fully intended to submit a letter to the VTA; they were concerned about the use and interference with Great Mall property; concerned about noise/vibration/subsidence/aesthetics and felt the City's concerns were similar regarding these concerns; there was no analysis whatsoever about the impact on Great Mall Drive; additionally, they had concerns there might not be enough parking at the Montague station; concerned about the railroad Wye (about disclosure of significant environmental impacts); concerned about the cumulative impacts of the project; but as a whole, felt BART was a good project but there needed to be more analysis and more disclosure about the significant environmental impacts.

Rob Means said there were six cities and the Board of Supervisors concerned about the BART extension into San Jose; the VTA had been called upon (in various letters) to produce a financial expenditure plan for the 2000 Measure A project; quoted one of the letters which stated "the Supervisors are concerned that many of the projects promised to the voters in the 2000 Measure A plan will not be built"; and commented on the rough numbers showing the expenses for building the system exceeded the income. Mr. Means further stated he felt with the PRT, a connection could be made between the local LRT station and the Fremont BART station for only \$200 million with the annual operating cost being zero because the fare box would pay for the very low operation and maintenance of such a system. Mr. Means suggested approaching the VTA and stating that BART was too expensive to build, we ought to let it go so we can open up new possibilities; then, PRT could be offered as a solution for problems such as traffic congestion, air pollution, and energy insecurity; felt that offering a potential solution would make it easier for the VTA to let go of BART he wanted to make it easier on the VTA because every year money is being spent on the BART project; and called on the Council to make it easy for the VTA and do it sooner rather than later.

A man said he was concerned about the vibration; he knows what it feels like every time the train goes by; felt that the measurement the people probably measured was the ground vibration; questioned what happened when the second story of the house is caused to vibrate; and he did not feel the vibration at the second level of the homes was really studied.

MOTION to close the public hearing.

M/S: Gomez, Livengood

Ayes: 5

Mayor Esteves reported that these concerns had been discussed in the City Council Transportation Subcommittee comprised of the Mayor and the Vice Mayor.

Vice Mayor Dixon thanked the residents who had taken the time to speak because it was important to have resident input; the VTA Board was also extremely concerned about the vibration, and commented on a prior problem with vibration when KB Homes first built California Landing. Vice Mayor Dixon said there were three proposals that the VTA staff had looked at; the alternative the VTA preferred right now out of all three was the least expensive; there were other areas within the process of the 16.3 miles projection of BART where there had been accommodations and compromises made, in particular by the hard effort of City staff (i.e., Montague/Capitol Station); the Board was looking at supporting the Wye to be moved out of one of the proposed Milpitas spots up north into Fremont, which would save millions; VTA was at the point of getting public input; and getting further into the two-year preliminary engineering process, there would be more than ample time to have all questions addressed and more analysis performed.

Councilmember Livengood commented that he felt comfortable that the issue was being dealt with by the City's Transportation Subcommittee, by the City's residents, and by the VTA Board; he thought the sensitivity of how Milpitas felt about BART was understood, however, that didn't mean Milpitas would take it at any cost; he wanted to make sure that this critical transportation improvement did not reek havoc in the City's neighborhoods; felt that Vice Mayor Dixon and the others would go to bat for Milpitas when this comes before the appropriate body to make sure Milpitas' voices were heard; Milpitas was going to insist that this project not only be an important transportation link for all of the Bay Area, but it be a good neighbor to Milpitas residents and expressed appreciation to everyone who was working on this.

Mayor Esteves said although cost was a factor, so was quality of life and Milpitas would not just go for the lowest cost but would look to balance the two.

Councilmember Polanski said she attended the VTA Policy Advisory Committee meetings; felt tonight's comments would very helpful and from the comments received, that further analysis was needed, especially on the Dixon Landing Road option.

Ann Jamison, VTA Project Manager for the planning for this project, said the VTA representatives were in the audience to listen but she had two clarifications she would like to address: first, on the distance for the retained cut – that would be 2,000 feet – it would be approximately the same distance as the aerial alignment (1,000 on either side); and clarified that the \$8.2 million increase for the Dixon Landing Retained Cut Option was with a speed limit of 25 mph and that the requested 35 mph would require additional track work and would be a more expensive option.

MOTION to approve the attached Draft Comment Letter on the DEIS/EIR.

M/S: Dixon, Polanski.

Ayes: 5

**2.
Appeal of Planning Commission
Approval Regarding Town
Center Redevelopment**

Mayor Esteves stated as he may have a conflict of interest because his brother was currently leasing a space at the Town Center and to avoid any potential or perceived conflict of interest, he would be abstaining from agenda items 2 and 3 and passed the gavel to Vice Mayor Dixon.

**3.
Ordinance No. 124.26**

Vice Mayor Dixon outlined the manner in which this item would be heard stating that first would be a staff presentation, then Council questions of staff; the appellant would be allowed 20 minutes for statements; the applicant would be allowed 20 minutes for statements; the

Town Center Signs

appellant would be given seven minutes for rebuttal and the applicant would be given seven minutes for final comments or rebuttal; the public hearing would be opened for public testimony, and following close of the public hearing, the Council would deliberate.

Assistant Planner Troy Fujimoto reported that the presentation would also include item 3, which was the introduction of the Sign Ordinance amendment. Mr. Fujimoto, using a PowerPoint presentation, presented an overview that included a description of the site area/project location, described the project as shopping center modifications that included the demolition of the western portion of the center and remodeling of the entire center, new supermarket and retail space, new landscape and architectural themes, and a new sign program. Mr. Fujimoto described the proposed supermarket as a 54,000 sq. ft. 24-hour operation that would include sales of all types of alcoholic beverages and an internal coffee cafe. Mr. Fujimoto described the building architecture, showed the site plan for the commercial, and displayed drawings of the proposed landscaping that included a row of palm trees and a group of maple street trees. Mr. Fujimoto reviewed the proposed Sign Ordinance Amendments that would allow the Town Center shopping center to have two more freestanding signs and would codify past City Council interpretations. Mr. Fujimoto then described the residential project that proposed 65 residential units to be located adjacent to Berryessa Creek behind the shopping center; the units would be townhouse style with 3 and 4 bedrooms, and recreational amenities included a tot-lot, barbecue pits, benches, and shelters. Mr. Fujimoto reported the project public benefits included a vehicular connection between the Civic Center and the Town Center; an enhanced pedestrian connection from the Civic Center to the Town Center, a pedestrian ramp from the Town Center to the future Berryessa Creek Trail, and an enhanced pedestrian crossing at Beresford Court.

Mr. Fujimoto reported the basis of the appeal was the constructing of an additional supermarket and the adverse economic impact on existing businesses, the loss of the discount cinema, the appropriateness of increasing housing in this location, and a supermarket's lack of conformance with the General Plan. Mr. Fujimoto presented the staff responses to the four issues raised in the appeal and reported that based on its evaluation, staff recommended upholding the Planning Commission approval of the redevelopment of the Town Center, which was supported by findings and special conditions.

Deborah Rankin thanked the Council for all the work they do for the City and thanked Councilmember Gomez for all the time had given them. Ms. Rankin said they had lived in Milpitas since 1991 and had seen many changes; they felt the Town Center does need redevelopment and revitalization and she didn't believe there was anyone at the meeting who would argue with that; they also agreed that Shapell had a right to create a profitable and successful enterprise to get a good return on its investment but were disappointed to learn of the introduction of another major supermarket and the demolition of the discount cinema; they were hopeful that this would not become the future of the Town Center and felt it was important for the public to voice their thoughts on what was to become of the central area of the City. Ms. Rankin further stated they attended the Planning Commission meeting on March 24, they emailed Debbie Giordano to voice their concerns, they saw the plans and were still hopeful that this would not happen but later learned in the Post that the Planning Commission had approved the project. Ms. Rankin said they filed the appeal on Monday, April 5, and since that time they had heard from many people regarding the decision and looked forward to hearing from others in the audience tonight.

Ms. Rankin further stated they felt a supermarket would have a detrimental affect on other business in the area; she spoke to Nob Hill and the response was it would potentially be devastating; a question regarding this concern was does the City Council have the right to basically say "no" to Safeway for the sake of other enterprises; her issue was not specifically with Safeway; she believed the Council would consider what was best for the good of the whole City, its businesses, and its citizens; felt the Town Center could be used in a way that would bring more reasons for people to come to this area; with respect to the theaters, they attracted many people from surrounding areas who then shop in Milpitas and the theaters provide inexpensive family entertainment. Ms. Rankin suggested building the Town Center as

a center for families and others to gather for fun and entertainment, put in old fashioned lamp posts, a Barnes and Noble and a café, and it could become a vital area for both daytime and night time; the point was not to stop a new store from coming into the area but to create a new center that would attract people from all over and be enjoyed for many years to come.

Wiley Rankin said they moved to Milpitas when they bought their home in 1991 and were delighted with the community as it reminded them of the Midwest 40 years ago where they grew up. Mr. Rankin commented on some of the City's history citing the Ford Plant's move from Richmond in the fifties, the formation of the Sunnyhills neighborhood, read from a history book about the area given to them by the Methodist Church, and described the diversity of his neighborhood. Mr. Rankin said he felt the Town Center had a special place within the City structure; they showed up at City Hall on April 5 to file their appeal; they had read Al Garcia's comments about the General Plan; clarified that their question really was does it fit into the Zoning regulations, and read excerpts from the Zoning regulations (XI-10-22.01 Purpose and Intent) relating to the Town Center. Mr. Rankin said it looked like it would have a devastating effect on Albertson's as well as possibly several other grocery stores, he was completely respectful of Shapell's investment in the City and hoped that a new and better plan will be more profitable than the current one; there were seven other supermarkets in Milpitas but none being the size and scope of Safeway; two aspects that seemed inappropriate about the placement of the proposed Safeway were allowing such a huge store to take a prominent geographical position that seemed to give support that went beyond simple market competition; there was no supermarket that is close to this size and only one open 24 hours; this Safeway would have services such as a bakery, deli, and cafe that could threaten and wipe out other businesses; Safeway has had two other sites in the past; and expressed concern about the similar large store in Warm Springs that has had detrimental affect on local businesses. Mr. Rankin commented that a friend had gathered signatures on a petition from people in line at the Cinema and in two hours collected 283 signatures that were turned in at City Hall. Mr. Rankin also commented on a wonderful letter from Susan Berne to the editor that didn't get in the Post.

Kelly Erardi, Vice President, Shapell, said he had been employed by Shapell in Milpitas for nearly 21 years with responsibility for the commercial development in Northern California, was very proud of the project before the Council this evening, and had worked diligently with City staff and various consultants to produce vastly improved architecture and landscaping, many pedestrian links, signage, and improved retail uses. Mr. Erardi reported 65 new housing units would be built with 16 of those units meeting affordable requirements; they had committed to an array of items that were of public benefit; as a result of working with City staff, Shapell Industries was in agreement with every one of the recommended conditions of approval; the project was in conformance with all the General Plan and Zoning requirements; outlined a brief history of the project and said Shapell Industries chooses to look at what has happened in the City of Milpitas as an opportunity to redevelop its project and bring in new blood and growth and competition creates opportunities with new cycles. Mr. Erardi said their consultants were on board and available with him to respond to questions.

Galen Grant, Craig & Grant Architects, gave a PowerPoint presentation showing photos of the site and elements around the site stating that the majority of the development would be in one particular area although every building would be touched; the architecture being proposed for the new structure would be consistent with the existing structures; Shapell was committing to making the project a pedestrian oriented center; thought it was important to mention that although Safeway would be a 24-hour market, no trucks would approach from the north, all would enter off of Calaveras for Safeway and Hillview for Mervyn's; pointed out the connections to the center; commented that given the current architectural theme in relation to what was being proposed, he felt there was significant improvement; pointed out the landscape screening, stating it ran almost continuously along the back side of the buildings; stated that many of the existing mature trees would be relocated along the access route that would separate and provide access to all the residential areas behind the center; and shared sketches leading to the residential, pointing out the arterial spine for pedestrians and vehicles leading back to the residential.

David Smith, Architect for Thomas Cox, said the firm only does residential; the last five years had shown a significant increase in the segment of their work he called “reinvestment” (changing of land use) but recognizing that, and without that reinvestment, things don’t get better; he thought the residential portion was in a terrific location for this housing proposal; shared the site plan for the residential reporting that there were two major easements (an underground water easement and an overhead power easement); density was approximately 19 to 20 dwelling units per acre with two and three-story units, a pedestrian element through the middle of the site over to the connection to the retail area, and floor plans ranging from just under 1,500 sq. ft. to almost 1,800 sq. ft.

Mr. Erardi said this was a great project with many public benefits; 65 new housing units with 16 of them being affordable; there would be an increase in property tax turning a parking lot into housing units that would help fund valuable City services; property taxes would increase in the shopping center; being in the Redevelopment District, the City will receive an extra share of that property tax revenue; they were paying over three quarters of a million dollars in park fees, paying school fees, enhancing the sidewalks at the Beresford Square Center and in front of the Library, creating a bridge over Berryessa Creek, taking over the landscape maintenance on Calaveras Boulevard as well as the City right-of-ways that front Hillview and North Milpitas Boulevard; the project will also add jobs, dramatically improve the architecture, signage, and landscaping, and will bring the center back to life with a retail and residential mix creating needed housing. Mr. Erardi further stated the appeal stated an additional supermarket would have an adverse affect on existing businesses; if that logic was followed, Wal-Mart and Century Theaters should not have been approved; listed more stores that should not have been allowed to leave the Shapell center; McCarthy Ranch and the Great Mall should not have been approved; Safeway was the best large supermarket in Northern California; it would include the typical departments seen in other Safeway’s and consumers would have a more diverse choice of shopping; Safeway performs its own studies prior to committing large sums of capital for a new store, would employ approximately 125-150 people, was a very successful and fierce competitor; there was no guarantee that anyone will be successful in our economy, but Safeway has an excellent record in Northern California and other stores would have to step up their services to compete (a benefit to the consumer). Mr. Erardi said the adverse affect argument, followed to its logical conclusion, allows one of everything; the City did not embrace that type of philosophy; the City was richer and more diverse for not adopting such an argument that would stifle and limit free trade and would do the consumer a disservice. Mr. Erardi, addressing the housing in the immediate area, said staff had done a good job of covering that; the site was identified in the Housing Element, was complimentary to the adjacent housing, encouraged walking, was close to goods and services, and would add affordable housing stock to the community. Mr. Erardi, in response to the objection to the demolition of Cinema Saver, read a letter into the record from Paul Gunsky, President, CineLux Theatres, regarding their relationship with Shapell stating they were on a short-term lease, they had agreed at the beginning with Shapell that there was no intent for their operation being a long-term or permanent tenant in the Town Center, and they were in negotiations to relocate the Cinema Saver to another site in Milpitas. Mr. Erardi, addressing the question as to whether the project fits the General Plan, said City staff had given solid findings that easily supported the project fitting within the General Plan and described how he thought the project fit into the purposes and intent of the Zoning District, commenting that Safeway and all grocery stores are meeting places and this particular store will have a coffee bar with seating; the Civic Center, Library, and Community Center were also meeting places, and the project ties in and compliments existing uses and meeting places. In conclusion, Mr. Erardi said he believed it had been clearly demonstrated by City staff, the consultants, and himself that the project was a vast improvement to what currently exists, conforms to the General Plan and Zoning District, was a project that would tie into the existing Civic Center and would be complimentary in its use; the project is a major retail and housing component of the District and would dramatically improve the architecture, landscaping, pedestrian access, retail uses, and signage; with the Council’s approval Shapell Industries was ready to take the next step in the redevelopment of the project; and there was always somebody or someone that

says they could do better but in Shapell's opinion, their research indicates that this was the project they wanted to go forward with.

Wiley Rankin said the main purpose of the appeal was to sustain dialog on this issue, there were other people in the community besides themselves who weren't expressing their opinions for whatever reason, a lot of them were present tonight, and, therefore, their purpose had been fulfilled.

Deborah Rankin said she understood that the cinema had been a short-term lease tenant, that they were happy to move to another location in Milpitas and was glad the cinema was not going to be lost, but her emphasis was what do we want the Town Center to be; she had no problem with Safeway but it is a huge store that might overwhelm some of the other businesses; she was for competition but felt the Town Center could be something very different that would attract people; questioned if it was possible to still have the townhomes without tearing out the Cinema Saver, explaining that it attracts many people to the area; hated to see the Town Center lose yet another strong tenant and commended Shapell on its plans but said she would like to see a different mix there.

Wiley Rankin also commended Shapell for a very professional presentation and for addressing each of their points; thought the zoning question was addressed very well but still questioned if it wouldn't have an adverse affect within the Town Center; the 125-150 jobs was a lot, which was very good for the City, but not if Albertson's and Nob Hill close. Mr. Rankin said he also believed in competition.

Mr. Erardi said he had no further rebuttal comments.

Vice Mayor Dixon opened the public hearing and invited comments.

Robert Yeh, representing the Beresford Village Homeowners Association, said the Beresford Village residents would be the most significantly impacted by this development; they had already submitted a letter expressing their concerns; and they were opposed to the project primarily because they have had no channel or vehicle for addressing their concerns. Mr. Yeh further stated they submitted their concerns to the Planning Commission and received no response; some of their concerns were noise, traffic, safety, and they had already experienced some safety-related issues with people crossing the street to go to the Town Center; and asked that approval of the development be delayed until some of their issues were addressed, or if approval was given tonight, it be with the understanding that Shapell will work with their community. Vice Mayor Dixon asked if the Beresford Homeowners were notified of the meeting held at the Town Center on March 29? Mr. Yeh responded yes, a number of residents attended but the meeting was primarily a presentation and not for questions and answers. Vice Mayor Dixon said she was at that meeting, and she heard questions and answers so Mr. Yeh might have left early. Mr. Yeh said he stayed and there were some questions and answers but to this date, they hadn't had any kind of response to the issues they raised.

Ann Zeise, Milpitas, said there had been quite a bit of discussion about this on her web site; she would like to see a little more creativity because she saw this as the same old ugly; there was nothing original about it, thought it was boring, and it had no charm; she didn't have a social life based on the grocery store; she didn't need another place to buy Cherrios; and felt an educational retail center should be provided where stores are required to teach something and you could hang out and learn something, have some meeting rooms where people could meet and talk because more meeting halls and community classroom space were needed.

Heide Wolf-Reid, Milpitas, said she had heard a lot of discussion or things said in opposition that were all very valid arguments but she heard none that really applied to a commercial center; the lady and gentleman who appealed made a wonderful presentation but she didn't learn anything that she didn't already know; what she, as a long-time resident, had seen was when leaders, such as Safeway, leave the town as they did and the shopping experience in this area declined; as far as the other supermarkets, she hoped they would be afraid of competition

and improve because she was tired of empty store shelves and terrible service; when she's not happy, she talks to them but she hasn't seen any improvement; she hardly shops in this town any more; and she has talked to many other people who shop outside this town because there really isn't a good grocery store in this town any more.

Maurice Hart, CO, Giorgio's in the Town Center, said that for the last six years he has witnessed firsthand the list of tenants dwindling down in the Town Center and the energy of the stores and the center going down; there was a definite lack of energy that needed to be put back into the store fronts; he thought Shapell has a wonderful plan of breathing new life into the center; and instead of driving the consumers to San Jose, they will find a bright, clean, new center in their own neighborhood that will attract even more shoppers to Milpitas.

John Ambrosio, Milpitas, owner of Giorgio's Italian Restaurant, said he thought this was a good project that will bring in lots of positive energy to the City that was desperately needed; encouraged everyone who has any doubt to drive to Evergreen Village Center to see the beautiful job Shapell did in creating a downtown community for that neighborhood. Mr. Ambrosio also said he thought Safeway was an excellent choice, he'd seen the Town Center lose major tenants, what Shapell was proposing would create more jobs and opportunities; being in the restaurant business, he had experienced many landlords and Shapell was a real class act and always had the best interests of the community; it was unfortunate the movie theater would have to relocate but the only reason they had success in the Town Center was due to the benevolence of Shapell in keeping some energy in the center and the low rent; the farmers' market could continue; Shapell's vision was a breath of fresh air and nothing negative for the future of the Town Center; it would bring in people from all over the area, and he thought this was a true win-win situation for all involved.

Marian Welch, District Manager for Giorgio's, commented that over the years, she had seen tenants leave the Town Center for more modern centers in the area; Shapell has a terrific plan to update and renovate the entire shopping center; it will bring new jobs and money into the City; one of the positive things will be the easy access in and out of the center itself; thought Shapell has the foresight for a clean, bright, modern updated center that will be wonderful for Milpitas; and she hoped the Council would consider this when they vote tonight.

Nelson Bolyard, Milpitas, said he had lived within a mile of the Town Center for the last 20 years and for him the reason he goes to the center was the movie theater; after a movie he sometimes likes going to a restaurant and thought the restaurants have benefited from that, too; he thought that was not the case with a grocery store; within one mile there are three major grocery stores; also within one mile was an abandoned, second-run movie theater, which was probably the only recourse for the Cinema Saver; he thought the message to Shapell was if they don't have the right anchor, the little businesses that surround it will not prosper, and he would like to see the center remain some form of entertainment.

Allysson McDonald, Milpitas, thanked the Council for providing this forum for the public to respond, congratulated Shapell for their proposed improvements of pedestrian walkways and crossings and the proposed bridge over Berryessa Creek; she lives near the Hetch-Hetchy right-of-way and can see herself and her family biking to the Town Center and the Civic Center when this bridge is installed; she did have concerns about the loss of amenities, in particular of the entertainment feature within the center; she has friends who come from Oakland and Hayward that meet at the movies; people come from all over because of the theater; and she appreciated that the Town Center is a very open, walkable place now and would like to see it stay that way.

David Hall, Milpitas, said he attended the Shapell meeting at the old Warehouse in March; one of the neighbors asked about the Mervyn's property because it seemed like a better location, but the answer was that Mervyn's owned the property; with Mervyn's wanting to sell some of their stores, he thought it might be better to wait and see if that could be developed for the Safeway Store, which would keep the trucks away from the residential and make the whole development much better.

Paul DeNies, Milpitas, said he had lived in Milpitas for 24 years and was a math teacher; he was tempted to challenge his students to investigate the sustainability of 8-plus grocery stores; presented his sense of history commenting on the Sunnyhills Supermarket, the current Ocean Market, the former Fry's (now SaveMart) stating that these were three examples he envisioned of what would happen if Safeway was brought to town – this project would create three ghost centers; asked that before the Council decides to improve the tranquil and urban Town Center, that they please consider the desire of the citizens of the community; and thanked Deborah and Wiley for financing this appeal.

LuAnn McKeefery, Milpitas, asked if it was possible Shapell didn't know what they already have – an opportunity for entertainment; commented on how people enjoy that and going to the movies at affordable prices; she envisioned adding some music, such as a folk guitar, in front of a restaurant; she was not excited about a grocery store because she already had a grocery store; suggested Shapell take a look at something that may be vibrant for them; and just because there was nobody in that space, the Cinema Saver may have given Shapell a gift telling them what to do for the citizens of Milpitas.

A lady, who didn't state her name, said that as a senior citizen, she didn't want to see Milpitas become a big city; even now the traffic is so much; a supermarket was not a big advantage; she didn't think Milpitas people will run to the supermarket after 10 p.m.; instead, if there was a 24-hour emergency center, that would be more useful; and thought that if a supermarket is open 24 hours, the crime will increase and it will increase pollution and traffic and health hazards.

Barbara "BJ" Navarro, Milpitas said she thought the design was very lovely but she was compelled by her two sons to come because they have had several dinner conversations about the Town Center and the lack of having a cinema; her sons ride their bikes to meet friends and go to the movies because it was an inexpensive place they could afford; she didn't understand why another grocery store was needed, and she came so she might get an answer to that; she felt another grocery store wasn't needed but entertainment was needed in the Town Center; people who ride their bikes there don't need a grocery store; she realized the other businesses needed to make a profit but she also believed the heart and soul of Milpitas were the families that live here, art and culture should be in the town Center, and it won't be there if we have a Safeway. Ms. Navarro said when she looks at City Hall, she is very proud but when she comes to the tree lighting ceremony and a Safeway is built, it won't be the same.

Renee Briones, Milpitas, commented that last night at his scout troop meeting, he asked the 20 scouts what they do after school and a lot said they go to the Cinema Saver; they would have been here tonight but their parents don't let them stay out after 8 p.m. because of homework; being close to the high school and Russell Middle School, they want a place they can hang around; they can't hang around the school; if we take that away, they will not have a good place to hang around; we don't need another Safeway; Safeway is not a place to hang around; and asked the Council to consider that in their decision.

Susan Berne, Milpitas, read a letter she had already submitted to the editor stating that she shops at Safeway when her errands take her anywhere near a store, and there is one in Warm Springs conveniently located; she was strongly opposed to having one built in the Town Center as there are three other grocery stores within a one minute radius; the addition of Safeway adds no convenience to Milpitas; she thought it was inappropriate for the Town Center and felt the Town Center is an under recognized gem for being the most pedestrian friendly, it is a place where she can park, unload her children and spend the entire day visiting stores, restaurants, the library, the grassy area and fountains, coffee shops, and attend cultural events and the farmers market; a big box store open 24 hours was completely out of character for the heart of this area; were Safeway to be located on the periphery area of the City rather than the heart, it would be less of an objection but hardly a necessity; what she felt would better serve the residents were a number of improvements Shapell could make to pedestrian

traffic, creating more shady areas perhaps a small skate park, a branch library, a branch community center, ethnic food services; and thanked the Council for their time.

Rob Means, Milpitas said he wanted to recap from the Milpitas Municipal Code and read that the Town Center is considered as the chief administrative, business, entertainment, and cultural center of the town as a whole; it seemed clear to him that a Super Safeway doesn't fit within that description. Mr. Means further stated that it was his understanding of the legal rules that he must make a legal challenge to this proposal at tonight's public forum; it was his legal challenge that the proposed Super Safeway doesn't conform to the Town Center Zoning; felt Shapell must follow procedures and make appropriate changes to the zoning descriptions first; read another Code section regarding conditional uses; said the Planning Commission, on a 4 to 3 vote, thought that Safeway was acceptable, however, he maintained that Safeway would impair the present and potential uses of adjacent properties; commented that the City Attorney had said it was legal but under this section, he disagreed. Mr. Means asked those in the audience who thought this was an important point to stand.

Constance Stackwood, Milpitas, said she had mixed feelings on this; she felt the grocery stores weren't doing the residents justice, was concerned with traffic, losing the theater and the farmers' market – things that were important that would be in competition with Safeway but she didn't think it was bad for them to try to find something; they lost a lot of business and that wasn't fair, either; if the plan was not exactly the way we want it, maybe it could be changed just a little; and she thought Safeway was a great company but she was concerned with the traffic.

Friedell Barnes, Milpitas, said revitalization, yes, so let's build a beautiful cultural arts center and maybe the San Jose Opera would come to Milpitas to perform; that was what people wanted in Milpitas – not a 24-hour grocery store and asked how many would want to live around a 24-hour grocery store; Safeway was a lovely idea but it was a grocery store and not a cultural arts center or something beautiful; and she didn't want to let a monopoly come in and drive out the small businesses.

Craig Ranker, Milpitas, said he used to live in Mountain View and suggested looking at Mountain View as they have a cultural center in the middle of town adjacent to City Hall; they have a beautiful theater and there is a vibrant evening life and weekend life; there was a lot of economic viability there it was and something he thought Milpitas should take a look at as we have an opportunity to do something similar here like that.

Guy Haas, Milpitas, said he shops for family groceries and finds himself going to more than one grocery store to get what he wants; he also sees some of his friends there but doesn't go there to socialize; he works about a mile from the Riverpark Safeway, a 24-hour operation, but was also disappointed in the store as it didn't do much better; he shops late and used to shop at Albertson's when they were a 24-hour operation but now they close at 2 a.m.

Nalla Sundarajan, Milpitas, said that it was true the Council was listening to the citizens concerns but she was extremely concerned that their voices weren't being heard; after looking at Shapell's beautiful project, she was seriously skeptical about how much weight the citizens' voices had and if they do make a difference; she didn't want more concrete and traffic; another supermarket was not needed and asked how many supermarkets does a 17 sq. mile city need; the people want a community center and somewhere kids can hang around together; she would like to see more fountains, more trees (not palm trees), somewhere citizens can come and have coffee together or another bookstore with a café; asked that the Council hear the voices and come up with some other plan; and suggested the City investigate, along with the Chamber, other possibilities to bring in other businesses and for Shapell to extend the lease on Cinema Saver and make them permanent.

Dean Eaton, Milpitas, said he would rather get a tooth pulled than shop in any of the supermarkets here; he didn't know how they stay in business because service was terrible and prices are high; he was looking for some bargains and Safeway might provide that; Shapell

has invested a lot of money here in all this development and now these people want them to come in with some cultural center; there already is San Francisco and other areas where entertainment is available; he was against the taxpayers buying the Town Center and building something here; suggested the Council go ahead and approve it as he thought another supermarket is needed to get the rest to come up to speed and offer some bargains.

Cyd Mathias, Milpitas, said she liked the idea of additional housing, which she thought would be beneficial; she didn't like the idea of palm trees and didn't like Albertson's, either; however, she would prefer to see a Safeway in her neighborhood on Abel; the Cinema Saver was very important for the teenagers although moving going was not what she considered the best form of entertainment for teenagers, but Cinema Saver was the most affordable way for them to see movies.

Carol Klein, Milpitas, said when she thinks of the Town Center, she thinks of a place where she feels connected with others, a place interesting and fun, a place where she can explore and relax; a Safeway puts her off; when she is grocery shopping, she is doing chores and it was not for fun; if a new grocery store comes into town, she thought it should be located in the Pines because the Pines doesn't have one; and she would like the Cinema Saver to stay.

Donna Eaton, Milpitas said it was true there are several grocery stores but for the income of the residents, there wasn't the quality, one was not even clean, and none offer good service.

Gurmail Kandola, Milpitas, said the loading dock of Safeway would be 300 ft. from his neighborhood and expressed concern about excessive noise and traffic from the delivery trucks; he felt another supermarket was not needed.

Jim Rabe, Milpitas, said he would like to know how someone came up with palm trees with the streetscape plan that we spent all the money on; he was on the Planning Commission when the Town Center was built and remembered everything about what Mr. Means said and didn't remember anybody having a supermarket in the Town Center.

Leslie Padilla, Milpitas, said she wanted to defend Nob Hill but thought Albertson's stinks and was very upset to hear that Cinema Saver might leave; she thought it sounded like when it came before everyone, it was a done deal because of all the money Shapell had already put into the project; she thought Shapell has a right to do exactly what they want but she was very disappointed it wasn't discussed prior to Shapell putting all that money into it; she thought the pedestrian emphasis was nice but nobody walks to Safeway to pick up groceries and walks home again; and asked why tear down an already built theater, where else would they go, and said she would like to see a compromise.

Robert Sallade, Milpitas, said he had heard a lot of emotional speeches but Shapell was only going to listen to the bottom line and the bottom line is customer base but he didn't think they were going to get a lot more customers with Safeway; Safeway abandoned its store and warehouse in Milpitas and he questioned why another Safeway should be allowed when they already abandoned one; he thought the Pines would be a good location; the customer base for Cinema Saver and the Great Mall theaters was equal but the Great Mall generates more cash; and felt what was needed was an upscale clothing store as there were not a lot of better choices.

Ms. Cheung, Milpitas, said she lives on the route of the potential delivery trucks; she attended the meeting where many of her neighbors raised the issue of noise and the sound engineers told them it would be acceptable if they closed their windows; and asked the Council to remember if they approved this, their neighbors would not have a happy living life.

A lady who did not state her name said she heard someone say something about entertainment and she would prefer something like that, she liked the idea of an educational school for dance or karate or a YMCA or a YWCA or the theater to stay not only for the teenagers but for any age and for families, too.

Brandon Farrell, Safeway Real Estate Manager, said he wanted to comment on how Safeway selects sites and what they look at. Mr. Farrell further stated that what they noticed in Milpitas was there is a lack of good conventional grocery stores, there are SaveMart, Albertson's, and Nob Hill but none are adequate and all are below 40,000 sq. ft.; the average size store built today is between 55,000 and 65,000 sq. ft. and the proposed Safeway Store in the Town Center would be 54,000 sq. ft. Mr. Farrell commented on stores in cities of similar size (Pleasanton and Livermore) as Milpitas and noted that Milpitas residents that are shopping at Safeway aren't spending their money in Milpitas; as for a meeting place, Mr. Farrell said this was redevelopment, Safeway and other grocery stores are often considered key components of redevelopment areas, and this is a meeting place in a sense because it brings people there.

There were no further comments.

MOTION to close the public hearing.

M/S: Livengood, Gomez.

Ayes: 4

Abstain: 1 (Esteves)

Councilmember Polanski asked if staff would address the noise issue. Mr. Fujimoto responded there could be some impact from the Safeway and the deliveries, so staff had the applicant submit a noise analysis on the project performed by an independent noise expert whose recommendations were incorporated with the Environmental Document and with the conditions of approval.

Councilmember Livengood said one of the things he likes to do when there is a lot at stake and a lot of different opinions that are somewhat diverse, is to try to figure out how we got here; what happened to lead us to this point where Shapell is asking to redevelop a shopping center into a grocery store and when it was originally built, it wasn't envisioned. Councilmember Livengood recalled the project, going back to 1977 when the land was nothing but weeds and power lines, gave some history about the Redevelopment Agency and the development of the Town Center, and said as a Councilmember, it was not his place to decide where people shop and if they like Safeway, they should have that opportunity to do it in Milpitas and spend their dollars here. Councilmember Livengood further stated he thought Safeway would raise the bar for the other shopping centers and grocery stores and force them to be more competitive; believed Safeway would give the Town Center the life it had 10 or 15 years ago when it was first built and thriving; he understood the concerns about the Cinema Saver but if Safeway was approved and the cinema goes away, he thought the City should be looking full time for a place for the theater to land as he thought it was a valuable asset and didn't want to lose it. Councilmember Livengood said he was compelled to say that none of the statements given swayed him to the point where the Shapell plan was a bad plan or that it would have a detrimental impact on the community; there were some good points made, some of which he agreed with, but he felt the project would be a benefit for the community and help revitalize a very important area of the City. Councilmember Livengood thanked the Rankins for bringing this forward and giving everyone an opportunity to address the issues.

Councilmember Gomez thanked the Rankins for appealing this and giving everyone the opportunity to discuss the matter; he was uncomfortable, as a policy maker, with some of the points brought forward; as a resident he would miss the Cinema Saver. Councilmember Gomez commented on the housing issue noting that the project is using 14 units/acre when the Housing Element allows 21-40/acre; was very comfortable that this project fits the Zoning and General Plan; the competition with other businesses would cause everybody to raise the bar and improve their services; the Cinema Saver has always been on a month-to-month and understood that Shapell was going to redevelop the site but he was glad the Cinema Saver is looking for another location. Councilmember Gomez further stated that Shapell had the same rights as any other developer to redevelop their site and to make it successful, and he was comfortable that the impact would be minimal.

Councilmember Polanski commented that she attended the Grand Opening of the Town Center in 1985; traffic had increased greatly over the years but a lot of the traffic impact in Milpitas was a regional problem that the Council had been trying to address over the years; she was pleased the Cinema Saver was actively seeking to relocate to a permanent place in Milpitas; she knew many Milpitas residents go to Fremont to shop, which is tax dollars going out of this community which meant those tax dollars weren't staying in the community to provide for such services as good police and fire, neighborhood parks, and recreational programs, and she had reviewed the plans and documentation and felt people would be amazed when it was developed. Councilmember Polanski said throughout the years Shapell has worked with the businesses as well as being a good community partner, she believed revitalizing the Town Center would be a big improvement for the citizens, and commended staff and Shapell for the design and presentation.

Vice Mayor Dixon complimented the Rankins on their presentation and noted when the Town Center opened, businesses on Main Street closed and the same comments were heard then as were heard this evening; clarified that the structure Shapell was building on Milpitas Boulevard had been approved over a year ago and would be a Panda Express Restaurant and another store; attempts previously had been made to get a Whole Earth or Trader Joe's in the Town Center but both had said Milpitas did not have the people to sustain such a business and did not meet their criteria; when the Century Theaters went to the Great Mall, the AMC Theaters in the Town Center closed; and Milpitas had tried to get a large supermarket into the Pines neighborhood. Vice Mayor Dixon commented on the City's complicated process to enlarge its Redevelopment Project Area and the development of the Great Mall and felt that because of the synergy of a leader in the grocery field such as Safeway, the City would be hearing from Trader Joe's and Whole Earth; the Cinema Theater was also looking at the Serra Shopping Center as well as the McCarthy Ranch area; and addressing Mr. Mean's comment regarding the original intent of the Town Center, she was on the Planning Commission at the time and it was broadly written to be as flexible as possible to allow as many diverse uses as possible within that District. Vice Mayor Dixon stated that Shapell had been a very good community neighbor and leader in Milpitas, they had financially contributed to Milpitas schools over the years, are a major contributor to the arts in the City, they allowed Mr. Means to place his PRT on their property for two weeks, and they let the Community Museum in free for six years. Vice Mayor Dixon said the City would be working with the farmers market to find a space for it, she appreciated all the comments tonight, the services the City provides for its citizens do not come free but come out of the City's ability to balance housing, shopping, jobs, maintaining traffic circulation, etc., and this was what fuels the services residents receive.

MOTION to uphold the Planning Commission's approval of S-Zone (SZ2003-12 & 13) and Use Permits No. UP2002-42 & 43, UP2003-57 & 58, and UP2004-1.

M/S: Livengood, Gomez. Ayes: 4 Abstain: 1 (Esteves)

Assistant City Manager Blair King read the title of Ordinance No. 124.26 amending Chapter 30, Title XI of the Milpitas Municipal Code to increase the number of freestanding signs in the Town Center Zoning District.

MOTION to waive the reading beyond the title.

M/S: Livengood, Gomez. Ayes: 4 Abstain: 2 (Esteves)

MOTION to introduce Ordinance No. 124.26.

M/S: Livengood, Polanski. Ayes: 4 Abstain: 1 (Esteves)

RECESS

Vice Mayor Dixon recessed the City Council meeting at 10:37 p.m. The City Council meeting reconvened at 10:46 p.m. with Mayor Esteves presiding.

4.
Water/Sewer Rates
Service Charges & Penalties

Principal Civil Engineer Darryl Wong reported this item was the proposed 2004/05 water and sewer rates and a proposal on utility penalties. Using a PowerPoint presentation, Mr. Wong reviewed the 2003 Financial Utility Master Plan guidelines and reported that the anticipated 2004/05 water and wastewater sales amount expected to be flat compared to 2003/04 and wholesale water and recycle water rates would increase (San Francisco PUC by 5%, Santa Clara Valley Water District by 7.6%, and South Bay Water Recycling by 34%). Mr. Wong reviewed the recommended increases for residential customers (an increase of \$3.14 per month), for Ed Levin Park (from \$1.07 to \$1.16/hcf), the City rate (from \$1.06 to \$1.15/hcf), and all others (quantity and fixed charges 11.9%). Mr. Wong showed a slide summarizing all recommended changes for water and recycled water. Mr. Wong reviewed proposed sewer rate increases due to the City's operating costs and what the City pays for the Water Pollution Control Plant. Mr. Wong said single-family residential rates were proposed to increase \$2.08 per month and all other customer rates were based on strength of discharges. Mr. Wong showed a slide summarizing all proposed sewer rate changes and a utility charge comparison with other cities showing Milpitas as slightly below the average.

Mr. Wong reported the City sends out approximately 22,000 delinquent notices per year (approximately 25% of all bills) and to deter these late payments, staff proposed a late payment charge for water, recycled water, sewer and solid waste of 5% of the unpaid balance if the regular bill is not paid; an additional 5% if the reminder notice is not paid, \$10 for the 24-hour shut-off notice, and a \$50 charge for reconnection during business hours and \$75 if after business hours; in addition, a \$150 per occurrence for tampering with City property, such as breaking the lock or meter, and a charge of \$14.75 per hcf measured on the meter for use of fire service water above 1 hcf per billing period. Mr. Wong reviewed the recommendations to close the public hearing, waive reading beyond the titles, and introduce the three ordinances.

Councilmember Gomez asked how would residents be alerted about the new charges. Mr. Wong responded after the ordinances are adopted, notices would be sent out to all customers, about a six-week notice.

Vice Mayor Dixon said she tried to compare her utility bill with the report but it was too confusing. Vice Mayor Dixon commented that since this was the first time for doing this, she knew it would help but expressed concern that six-weeks notice might not be enough. Vice Mayor Dixon also expressed concern for residences where the meter reader can't get to the meter because of overgrown vegetation and in some cases has to cut away the weeds and vegetation. Mr. Wong said that some of the meter readers do spend some time clearing access. Vice Mayor Dixon said she thought there should be a charge for not making sure a meter is exposed. Mr. Wong responded that he would feel comfortable including something like that into the ordinance if there was an access problem and the customer doesn't correct it. Vice Mayor Dixon asked if there was a record kept. Finance Director Emma Karlen responded that staff was aware that this was sometimes a problem, when staff looked into imposing some of these late penalties this was also considered but it was difficult to determine how long a time it takes to clear a meter because each situation was different.

Vice Mayor Dixon commented that the comparison chart for water showed that even with the increase, Milpitas seemed to be in line with other cities but for sewer, Milpitas seemed to far exceed everyone else. Mr. Wong responded that Milpitas' buy-in at the Water Pollution Plant was higher than neighboring cities because Milpitas bought in later; staff was trying to normalize that but Milpitas started out later than some of the other cities.

Councilmember Polanski inquired, with regard to the penalties for breaking City property, how would she keep somebody from opening up her meter and tampering with it. Mr. Wong responded the problem wasn't with people getting into it; it was when the meter is locked off and people are trying to get water.

Mayor Esteves commented that this was discussed with the Utility Subcommittee, comprised of the Mayor and Councilmember Livengood, he knew the penalty was to deter delinquent

payments and asked how uncollected accounts were being addressed. Finance Director Karlen responded that currently a \$150 deposit is imposed for new accounts, which helps a little with any uncollected account; staff did bring to the Council a policy that if an uncollected account was over a certain amount, it is taken to Small Claims Court but that would not be economical for small amounts. Mayor Esteves asked how much in uncollected accounts were there in terms of numbers and amounts. Ms. Karlen responded she didn't have the number in front of her but when it was brought to the Council last August, a couple of the larger accounts were over \$50,000 and the rest were smaller, averaging \$100-\$150.

Mayor Esteves said he thought the penalty was good but uncollected accounts could be lost money so maybe when this comes back, staff could think of other ways in addition to Small Claims Court.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Polanski, Livengood.

Ayes: 5

Principal Civil Engineer Wong read the titles of Ordinance No. 120.42, an Ordinance of the City of Milpitas amending Sections 6.05, 6.09, 6.10, 6.11, 6.13, 6.14, 6.15, 6.16, and 6.17, Chapter 1, Title VIII of the Milpitas Municipal Code relating to construction water, time for payment, discontinuance of service, restoration of discontinued service, quantity charges, bimonthly water meter charges, fire service charges, effective date of water rates and meter maintenance, respectively; Ordinance No. 208.389, an ordinance of the City of Milpitas amending Title VIII, Chapter 2, Sections 6.01, 6.03, and 6.04 of the Milpitas Municipal Code relating to sewer service charges, authority to disconnect, and payment for sewage services, respectively; and Ordinance No. 48.15, an Ordinance of the City of Milpitas amending Section 9, chapter 200, Title V of the Milpitas Municipal Code relating to termination of water service for nonpayment of solid waste collection charges and fees.

MOTION to waive the readings of all three ordinances beyond the titles.

M/S: Livengood, Gomez.

Ayes: 5

MOTION to introduce Ordinance No. 120.42, Ordinance No. 208.389, and Ordinance No. 48.15.

M/S: Livengood, Gomez.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 11:15 p.m.

RA2. ROLL CALL

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

RA3. MINUTES

MOTION to approve the Redevelopment Agency minutes of May 4, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Livengood.

Ayes: 5

RA4. AGENDA

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Livengood.

Ayes: 5

RA5.

Mayor Esteves announced that since this item pertained to the Town Center, he would be

**SHAPELL INDUSTRIES MOU
AFFORDABLE HOUSING**

abstaining and passed the gavel to Vice Mayor Dixon and left the Council Chambers.

Principal Housing Planner Felix Reliford reported this item was being submitted in conjunction with items 2 and 3 on the Council agenda and involved the development of a 65-unit town home project and redevelopment of the Town Center. Mr. Reliford reported staff was recommending the Agency adopt a resolution approving a Memorandum of Understanding with Shapell Industries providing loan assistance to facilitate the construction of 20 deed-restricted affordable housing units consisting of 16 moderate-income units and 4 very low-income units (consisting of the rehabilitation of rental units off-site with deed restrictions); in return for the Agency's financial assistance with four off-site units, the developer will fund and/or construct on and off-site improvements benefiting the public valued at \$392,000; the total value of the proposed Agency assistance in loans and grant is \$1 million (pledged in the form of silent second loans of \$50,000/unit, for a total of \$800,000, and \$200,000 for the rehabilitation of the four off-site units).

Vice Mayor Dixon inquired if the process for the affordable units would be the same as was used for the Parc Metro development with priority being given to teachers. Mr. Reliford responded the Council had set a policy that included a priority for Milpitas residents, teachers, and City employees. Vice Mayor Dixon asked for confirmation that the applicant was in agreement. Mr. Reliford responded yes.

MOTION to adopt Resolution No. RA219 of the Redevelopment Agency approving a Memorandum of Understanding by and between the Redevelopment Agency of the City of Milpitas and Shapell Industries of Northern California.

M/S: Polanski, Gomez.

Ayes: 4

Abstain: 1 (Esteves)

Mayor Esteves returned to the dais.

**RA6.
LIBRARY PROJECT
UPDATE**

Assistant City Engineer Greg Armendariz presented an update on the Library project reporting that the architect selection process was underway and highlighting upcoming project milestones. Mr. Armendariz reported that a two-part request for proposals for a design architect had been issued; a fee portion would be required only of the short list; and the interviews would be video taped. Mr. Armendariz further reported that 60 consultants attended the pre-proposal conference on April 15, 21, and 28; proposals were due May 10; the proposals would be evaluated and the short list developed by May 17; the first round of interviews was scheduled for May 20; the results would be presented to the Library Subcommittee on May 25; the second round of interviews would be scheduled the week of June 14; by June 22 a final selection would be made; and on July 6 the contract for architectural services would be presented to the Council. Mr. Armendariz noted that staff was also actively advancing various other Library-related projects.

Mayor Esteves commented that this was also discussed by the Library Subcommittee comprised of the Mayor and Councilmember Livengood.

MOTION to note receipt and file Library Project progress report.

M/S: Gomez, Polanski.

Ayes: 5

**RA7.
FINANCIAL STATUS
REPORT (9 MONTHS)**

Finance Director Emma Karlen presented the City's Financial Status Report for the nine months ended March 31, 2004, reporting that the regional unemployment rate was higher than for the Nation and State; sales tax revenue recovery was still lagging in Santa Clara County; and General Fund revenue for the nine months was down 6.6% from the previous year. Ms. Karlen further reported that General Fund revenue projections had been revised downward approximately \$275,000 and over all approximately \$3.05 million below the adopted budget. Ms. Karlen reviewed expenditures commenting that General Fund expenditures at the end of March remained under budget (70.3% v. 75%) resulting in a savings of approximately \$2.8 million at the end of the fiscal year. Ms. Karlen reviewed the General Fund projected use of

Reserves noting a revised number of \$5.59 million, which was about \$275,000 off from the budget. Ms. Karlen reported that the General Fund Reserve balance was on target; looking at the reserve fund history last 10 years, because the City was able to build up the reserve balance in the last few years, the City was able to use some of the saving now to continue providing services to the community and still maintain a 15% reserve fund balance.

Councilmember Livengood inquired where the \$5 million was that was set aside for the Library. Ms. Karlen responded it was with the Library fund and so wasn't shown here. Councilmember Livengood commented the number that was the most alarming to him was the General Fund revenue collected as of the first three quarters and asked what that number would be at the end of the fiscal year. Ms. Karlen responded she projected about 7 or 8 percent less than the budget (93%).

Mayor Esteves, referring to the projected use of reserves, inquired if staff was already assuming the deficit would be filled out by the use of reserves. Ms. Karlen responded the use of reserves was projected when the budget was adopted. Mayor Esteves commented that this was more than the budgeted amount (\$5.9 million v. \$5.32 million) and asked if it was assumed that reserves would totally cover the \$5.9 million deficit. Ms. Karlen said right now based on nine months, the budget was about \$270,000 off but that amount might still be made up with additional revenue or additional savings, so it was hard to say exactly. City Manager Tom Wilson added that it was a presumption only, staff didn't know what the gap may be, there may be some revenue increases in the last quarter and if there is a need to utilize more reserves because we simple don't meet the revenue projection, then staff would have to come back to the Council. Mayor Esteves asked for confirmation that this picture was not the automatic use of reserves. Ms. Karlen said it was to give the Council what could potentially happen at the end of the year. City Manager Wilson added that it has to be approved by the Council and this was just a prediction and just trying to give the Council a heads up.

MOTION to note receipt and file.

M/S: Gomez, Polanski.

Ayes: 5

***RA8.
INVESTMENT STATUS**

Noted receipt and filed the investment report for the quarter ended March 31, 2004.

***RA9.
INITIAL ACCEPTANCE**

1. Adopted Resolution No. 7399 approving initial acceptance of ACCO's contract and authorizing the RDA Project Manager to file a Notice of Completion and release \$86,594.15 from the retention account, remaining retention to be released in accordance with the Public Contract Code; and

2. Adopted Resolution No. 7400 approving initial acceptance of Royal Glass contract and authorizing the RDA Project Manager to file a Notice of Completion and release retention in accordance with the Public Contract Code.

**RA10.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 11:37 p.m.

COUNCIL ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:37 p.m.

Gail Blalock, CMC
City Clerk